

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DAVID SIDOO et al.,

Defendants

No. 1:19-CR-10080-NMG

**DEFENDANTS' CONSOLIDATED STATUS REPORT RE: DISCOVERY AND
REQUEST FOR EXTENSION OF TIME TO PROPOSE A BRIEFING SCHEDULE
FOR DISCOVERY MOTIONS**

On January 10, 2020, the Defendants¹ and the government filed a Joint Status Report. Dkt. #730. The Status Report suggested a March 13, 2020 deadline for the filing of discovery motions. *Id.* at 4. On January 17, the Court adopted the deadline proposed by the parties. Dkt. #745.

On February 26, 2020, the government disclosed, for the first time, certain exculpatory material (i.e., Singer's "iPhone notes"). The District Court held a hearing on February 27, after which, on March 4, the government provided additional voluminous discovery which the Defendants believe contains additional exculpatory evidence. *See* Letter Regarding Status Report (Dkt. #918) (detailing the evidence to be disclosed by the government). The Defendants continue to complete their review of the March 4, 2020 production.

¹ All Defendants join in this Status Report and Request for Extension of Time.

On March 8, 2020, the Defendants filed an assented to Motion for Extension of Time to File Discovery Motions. Dkt. #928. The Court allowed that motion on March 9, 2020. *See* Dkt. #930. The Court's March 9, 2020 order provided as follows:

In light of defendants' assented-to motion to revise the schedule for the filing of discovery motions #928, the present deadline of March 13 is suspended, and the defendants may file a proposed schedule for the filing of discovery motions, should one be necessary, as part of the status report they are already required to file on March 20, 2020.

Id.

Pursuant to the Court's March 9, 2020 order, the Defendants hereby submit this status report and request for extension of time to propose a schedule for the filing of discovery motions.

I. Status of Discovery

The government has provided a significant volume of discovery in recent weeks and has been responding to discovery requests from the Defendants. The parties are actively attempting to resolve any discovery disputes without the intervention of the Court. On Friday, March 13, 2020, the government sent a letter to the Defendants cataloguing the voluminous additional discovery materials forthcoming (the "March 13 Letter"). Those materials were received on March 16. Due to the ongoing COVID-19 global pandemic and its disruption of normal business capacities, some Defendants experienced difficulties having the materials uploaded to their document review platforms, thereby delaying their review of these materials. The Defendants' review of the March 16, 2020 production is ongoing.

A. The March 16, 2020 Discovery Materials Provided

On Monday, March 16, 2020, the Defendants received 204,834 Bates-stamped pages, 17.4 gigabytes of data that included 1,845 audio files and 81 video files from the government pursuant to the March 13 Letter. The March 13 Letter indicated the materials provided by the government included:

1. 204,834 pages of documents Bates-stamped VB-RECORDS-00501313 – VB-RECORDS-00706147 (primarily consisting of e-mails of Mikaela Sanford (“Sanford”), a former employee of The Key who is a defendant in a related case);
2. Pen register data for William “Rick” Singer’s (“Singer”) phones with phone numbers ending in 0584, 8802, and 5816;
3. Proffer agreements with Singer and others;
4. Title III and consensual recordings not previously produced, including a recorded call between Singer and government agents;
5. Text messages from Sanford’s phone;
6. Consent to search forms signed by Singer;
7. Reports regarding agents’ contacts with Singer during the investigation;
8. The contents of Singer’s Google Drive accounts;
9. Handwritten notes created by Singer during the investigation, including written “scripts” that Singer used during calls with defendants and others;
10. Records related to expense reimbursement requests made by Singer during the investigation;
11. Text message screenshots sent from Singer to agents during the investigation;
12. A video and related documentation concerning two individuals connected to the investigation;
13. FBI and IRS interview reports and associated agent notes;
14. Ping data for Singer’s phone with phone number ending in 8802;
15. QuickBooks files for The Key Worldwide Foundation and The Key; and
16. An image of Singer’s flip phone with phone number ending in 5816.

B. The March 16, 2020 Discovery Materials Not Yet Provided

In the March 13 Letter, the government also indicated that it was “currently copying” Singer’s laptop, seized on or about November 23, 2018, and would provide the laptop to the Defendants on a thumb drive as soon as the copying was complete. As of the time of this filing, the Defendants have not received the thumb drive with an image of Singer’s laptop.

C. Additional Materials Not Yet Provided

The government has previously indicated that emails and documents which the government obtained via search warrants related to several defendants in this case are currently being reviewed for privilege, and that it will produce all additional non-privileged material from a variety of different custodians “as soon as possible.”² Dkt. # 918. Certain Defendants have also met and conferred with counsel for the government regarding outstanding discovery requests, who have indicated that the government will consider further productions requested by Defendants.

II. Requested Extension of Time for the Defendants to File a Recommended Schedule for Filing of Discovery Motions to April 3, 2020

Due to the government’s recent discovery production, the additional productions currently being considered by the government, and the ongoing global pandemic, Defendants request that the March 20, 2020 deadline for the submission of a proposed schedule for the filing of discovery motions, should further motions be necessary, be extended for two weeks to April 3, 2020. This two-week extension will allow the Defendants to further review the additional discovery, assess which further discovery motions are necessary, and set a realistic schedule for the briefing of such

² Custodians include: Rick Singer; Gordon Ernst; Donna Heinel; Martin Fox; Mark Riddell; Amy Colburn; Diane Blake; Elisabeth Kimmel; Gamal Abdelaziz; Homayoun Zadeh; Lori Loughlin; Robert Zangrillo; and John Wilson.

motions.³ Providing this brief extension will benefit the Court and the government by allowing the Defendants to more accurately determine what they do and do not have, and more narrowly tailor any further discovery motion practice. This will further benefit all parties and the Court by facilitating efficient adjudication of this matter.

Defendants accordingly respectfully request that the Court amend the deadline for the filing of a proposed schedule for discovery motions to April 3, 2020. The government has assented to this request to extend the time for the Defendants to file a proposed schedule for the filing of discovery motions, should such motions be necessary.

Dated: March 20, 2020

Respectfully submitted,

ELISABETH KIMMEL

By her attorneys,

/s/ Cory S. Flashner

R. Robert Popeo (BBO # 403360)
Mark E. Robinson (BBO # 423080)
Eóin P. Beirne (BBO # 660885)
Cory S. Flashner (BBO # 629205)
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111
(617) 348-1707 (telephone)
(617) 542-2241 (fax)
rpopeo@mintz.com
mrobinson@mintz.com
ebeirne@mintz.com
cflashner@mintz.com

³ Defendants expect that it is likely that at least one discovery motion will be necessary, and they are currently assessing whether others will be necessary. The government has confirmed that it does not intend to comply with at least some of the requests presented by certain Defendants.

LOCAL RULE 7.1(A)(2) CERTIFICATION

I hereby certify that I conferred with counsel for the government in an attempt to resolve or narrow the issues raised by this motion. The government assents to this motion.

/s/ Cory S. Flashner
Cory S. Flashner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing was filed electronically on March 20, 2020, and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing.

/s/ Cory S. Flashner
Cory S. Flashner